IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JERRY JOSHUA	§	
	§	
	§	**CIVIL NO. ________________**
VS.	§	**JURY**
	§	
	§	
WALMART STORES, INC.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1343 (4); 42 Section 2000e - 5(f) and 28 U.S.C. Sections 2101 and 2102. This suit is authorized and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964", 42 U.S.C. Sections 2000e et. seq. The jurisdiction of this Court is invoked to secure protection of and to redress depravation of rights secured by (a) 42 U.S.C. Section 2000e et seq. as amended by the Civil Rights Act of 1991, providing for relief against discrimination in employment and (b) 42 U.S.C. Section 1981, as amended by the Civil Rights Act of 1991, providing for equal rights of all person and every state and territory and the jurisdiction of the United States.

2. Venue is proper in the Court pursuant to 28 U.S.C. § 1391 in that the Plaintiff was a resident of the district during his employment with Defendant, the Defendant is doing business in this district, and the activities giving rise to the Plaintiff's claim took place in this district.

3. The company has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701 (b)(g)(h) of Title VII, 42 U.S.C. Section 2000e (b)(g)(h).

4. Since at least September 1, 2003, the company has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of § 701 (b)(g)(h) of Title VII, 42 U.S.C. Section 2000e (b)(g)(h).

5. Within 180 days of the occurrence of the acts which Plaintiff complains, a charge of employment discrimination was filed with the Equal Employment Opportunity Commission (EEOC) by Plaintiff herein on or about December 4, 2009, against the company.

6. On April 9, 2011, Plaintiff received a "Notice of Right to Suit" from the Dallas District office of the Equal Employment Opportunity Commission and a civil action is now instituted in the appropriate Federal District Court within ninety (90) days of the date the receipt of said notice.

PARTIES

7. Plaintiff, **JERRY JOSHUA** is an individual residing in the Eastern District of Texas.

Defendant, **WALMART STORES , INC.** has continuously been and is now a foreign corporation doing business in Mineola, Wood County, Texas. Defendant's Registered Agent is C T Corporation System, 350 N. St. Paul St., Ste. 2900, Dallas, TX 75201-4234. The company has continuously and does now employee more than five hundred (500) persons.

CLAIM FOR RELIEF

8. Plaintiff was an employee of Defendant and is a native of the Island of Palau. Plaintiff was employed with **WALMART STORES , INC.** in the position of stocker. He has a strong Asian accent and also is dark skinned. Joshua's manager was David (last name unknown). David repeatedly pressured Joshua, called him names, and yelled at him to finishing stocking aisles. For hours at a time, David made comments like “hurry up”, “you are too slow”, etc..., while holding his arms up and looking at his watch. Joshua was the only stocker who consistently was given four aisles to stock. Most of the time, the Caucasian stockers were given one aisle to stock, and occasionally two aisles. David never told Joshua what time each aisle had to be finished, or the

order in which he wanted the aisles completed. Furthermore, when David told the three Caucasian stockers that they were too slow, each of them was provided a warning and some "retraining," and David transferred them to another department. In contrast, David never gave Joshua any written warnings, or option to transfer like he had done for the Caucasian stockers. (Walmart has a retrain policy that wasn't offered to Joshua.)

NO TRAINING:

9. Walmart didn't train Joshua in reporting any suspected discrimination. Walmart employees repeatedly used racially insensitive language towards another Palau-born employee. For example, Walmart co-workers repeatedly called similar Palau-born employee Elory Syozitaro ("Syozitaro") "*hey boy*" whenever they needed him, and told him that he was only married to his wife because he needed a green card. Syozitaro slapped one of these co-workers after one racially insensitive comment. Syozitaro didn't report these racially insensitive comments for three reasons: a) in Palau, there is a cultural norm of not confronting anybody in authority, or questioning them; b) neither Joshua nor Syozitaro knew about discrimination policies; and c) both Palau-born employees were afraid to lose their jobs if reporting suspected discrimination.

TERMINATION:

10. On November 29, 2009 at 5 a.m., David approached Joshua and said that he was firing Joshua for being too slow. Joshua said, "thank you for this opportunity to work with you." David eagerly took Joshua's badge and equipment, and ordered Joshua to sign three pieces of paper that Joshua didn't understand nor was clearly explained to him. David said that Joshua had to sign the paperwork. Joshua, to this day, doesn't know what he signed.

11. In short, Walmart created and fostered a hostile work environment via its disparate treatment of Joshua due to his national origin, in violation of Title VII of the Civil Rights Act of 1964 and the Texas Labor Code.

12. Plaintiff was terminated in violation of company policy in that he was not afforded any notice of his performance deficiencies as were similarly situated employees which are non-natives

of the Island of Palau. At all times relevant hereto, Plaintiff has been discriminated against by Defendant with respect to compensation, terms, conditions, privileges, and opportunities of employment and has been subject to those illegal acts, practices, and conduct alleged in this Complaint.

13. At all times relevant hereto, Defendant has enacted and effected policies and practices of unlawful and systematic exclusion of and discrimination against Plaintiff, as a native of the Island of Palau by *inter alia*:

a. Failing to equalize conditions of employment for Plaintiff as contrasted with Caucasian employees;

b. Adopting unreasonable, unwarranted and arbitrary standards and conditions of employment and advancement designed to discriminate against Plaintiff in favor of Caucasian employees.

c. Denying Plaintiff positions of employment and promotions because he is a native of the Island of Palau.

DAMAGES

14. Plaintiff would show the court that he has suffered actual damages for lost back wages, emotional pain and suffering, inconvenience, mental anguish and loss of enjoyment of life as a direct result of Defendant's discriminatory employment practices described above.

15. Plaintiff would further show the court that he is entitled to recover punitive damages for Defendant's discriminatory employment practices described above which were intentional and malicious acts.

16. Defendant intentionally inflicted extreme emotional distress upon Plaintiff by life as a direct result of Defendant's discriminatory employment practices described above. Plaintiff has suffered extreme emotional distress, embarrassment, severe disappointment, indignation, shame, despair, and public humiliation due to Defendant's conduct.

17. Plaintiff is entitled to recover his reasonable and necessary attorney's fees pursuant to 42 U.S.C. 2000e-5(k).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that judgment be entered against Defendant and in favor of Plaintiff:

a. Requiring that Defendant pay over to Plaintiff the actual, compensatory damages suffered by Plaintiff by reason of Defendant's illegal acts and practices, including adjusted pay, with interest, and additional amount as liquidated damages;

b. Requiring Defendant pay to Plaintiff damages for mental distress, emotional pain and suffering, inconvenience and loss of enjoyment of life imposed upon Plaintiff through and as a result of the aforementioned discriminatory acts;

c. Requiring Defendant to pay Plaintiff in the nature of punitive damages as a result of Defendant's willful and malicious discrimination against Plaintiff;

d. Requiring that Defendant pay to Plaintiff his attorney's fees and costs and disbursements incurred in the prosecution of this suit; and such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

__/s/______________________________

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